IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

WRIT PETITION NO.1246 OF 2005

Tata Consultancy Services Ltd. ...Petitioner.
Vs.
The Regional Provident Fund Commissioner & Ors....Respondents.
....
Mr.K. M. Naik with Mr. S. P. Salkar for the Petitioner.
Mr.M. S. Karnik for Respondent No.1.
.....

CORAM : DR.D.Y.CHANDRACHUD, J.

September 20, 2006.

ORAL JUDGMENT :

I

The issue which arises in these proceedings under Article 226 of the Constitution of India turns upon the interpretation of a notification issued by the Central Government in the exercise of the power conferred by Section 1(3)(b) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. The effect and purport of the notification was that with effect from 31st May 1971, the Act was extended to “every establishment” rendering expert services such as supplying of personnel, advice on domestic or departmental enquiries, special services in rectifying pilferage, thefts and pay roll irregularities to factories and

establishments" and employing 20 or more persons. The adjudicating authorities governed by the provisions of the Act, including the Appellate Tribunal came to the conclusion that Tata Consultancy Services Ltd., the Petitioner before the Court, met the description of an organization rendering expert services within the meaning of the notification dated 17th May 1971. The Petitioner while disputing that interpretation, submitted before the Court that the words "expert services" are followed by the expression "such as", after which establishments of a specific nature have been adverted to. The question before the Court is whether any and every establishment rendering expert services is within the purview of the notification dated 17th May 1971 or whether, as submitted by the Petitioner, establishments analogous to those which have specifically been listed out would fall within the purview of the notification. For the reasons which are now indicated, this Court is of the view that while the expression "such as", it is well settled, is illustrative and not exhaustive, an establishment, to be within the purview of the notification should be rendering expert services of the type adverted to in the notification. This view, as the reasons contained in the judgment would elaborate is consistent with the law laid down by the Supreme Court in its decisions in **Royal**

Hatcheries Pvt. Ltd. vs. State of A.P.[1] and **Central Bank of India vs. Ravindra**,[2] and the judgment of a Learned Single Judge of this Court, Hon'ble Mr.Justice R.M. Lodha in **Bombay Municipal Corporation vs. Daily Taj Pvt. Ltd.**[3] The conclusion that has been arrived at in this judgment is that the nature of the business activities that are carried on by the Petitioner does not fall within the purview of the type of expert services brought within the scope of the notification dated 17th May 1971. It would also merit emphasis that it is now undisputed that by a notification dated 27th July 2006 establishments providing Information Technology Services have been brought within the purview of the Act and the Petitioner has accordingly accepted the applicability of the Act with effect from the date of the notification. The Petitioner has, however, submitted an application for exemption assuming that the Act does apply on and from 27th July 2006.

II

The Petitioner before the Court was a division of Tata Sons Ltd., a Company incorporated under the provisions of the Companies Act, 1913. Tata Sons Ltd. had at all material times a

1 1994 Supp(1) SCC 429
2 (2002) 1 SCC 367
3 AIR 2001 Bombay 263

Provident Fund since 1938 called “Tata Sons Consolidated Provident Fund”. The Petitioner came to be incorporated under the provisions of the Companies Act, 1956 and this Court was informed that in pursuance of a scheme that was sanctioned by the Company Judge, the Consultancy Services Division of Tata Sons Ltd., came to be transferred to and vested in the Petitioner on 9th August 2004. The activities of the Petitioner consist of providing computer oriented consultancy services to Corporate bodies both in India and overseas. The activities mainly comprise of processing mass statistical information of individual industrial establishments with the aid of Information Technology so as to provide management control. Information is processed on various aspects such as financial accounting, sales, purchases and inventories. The Petitioner also claims to be specialised in General Management Counseling and in carrying out surveys to examine possibilities of introducing computerization in accounting, purchasing, marketing, inventory control and other related areas. The Petitioner employs 70,000 employees in India and Overseas who are mainly computer professionals working in a consulting cadre.

On 17th May 1971, the Central Government issued a notification in the exercise of powers conferred upon it by the provisions of Section 1(3)(b) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. By the notification the application of the Act was extended to a class of establishments wherein expert services of the nature stipulated therein were rendered. The notification provided thus:

> "The Central Government hereby specifies that with effect from the 31st May 1971, the said Act, shall apply to every establishment rendering expert services such as supplying of personnel, advice on domestic or departmental enquiries, special services in rectifying pilferage, thefts, and pay roll irregularities to factories and establishments on certain terms and conditions as may be agreed upon between the establishment and the establishment rendering expert services, and employing twenty or more persons."

Contemporaneously with the extension of the Act to the aforesaid establishments, a notification came to be issued by the Central Government so as to amend the Employees' Provident Fund Scheme.

By a letter dated 15th March 1977, the First Respondent informed the Petitioner that its establishment was engaged in activities of the nature provided for in the notification dated 17th

May 1971 and that accordingly the Act was applicable on and from 31st January 1971. A code was assigned to the Petitioner and the Petitioner was advised that its employees would have to be covered by the Act and the Scheme. The Petitioner replied on 19th May 1977 denying the applicability of the Act on the ground that the activities of the Petitioner did not fall within the type of expert services that were enumerated in the notification. An order was passed under Section 7A on 18th June 1993 holding that the Petitioner was rendering expert service within the meaning of the notification. In a challenge before this Court, on 27th June 1997, on a concession made by the First Respondent, the order was quashed and set aside and the proceedings were remitted back for a fresh decision on the basis of the evidence that was to be adduced before the authority. Upon remand, a fresh order was passed on 24th November 1998 which again was the subject matter of the challenge before this Court. On 15th February 1999 there was a second order of remand by a Learned Single Judge of this Court. Again after the remand, an order was passed on 2nd/15th November 1999 by which the First Respondent held that the question whether the establishment was covered by the provisions of the Act had already been decided on 24th December 1998 and

that the authority was only reiterating the earlier conclusion. The appeal preferred by the Petitioner was dismissed by the Appellate Tribunal and thereupon a petition was filed before this Court under Article 226 of the Constitution. During the course of the hearing of the petition, a statement was made before the Court by Counsel appearing on behalf of the Petitioner that without prejudice to the rights and contentions of the Petitioner that the Act itself was not applicable, the Petitioner was willing in good faith to submit an application for exemption under Section 17 of the Act in order to allay any apprehension in regard to the Provident Fund Scheme that was administered by the Petitioner to the satisfaction of the authorities. This Court specifically recorded the contention of the Petitioner that the Company was ready and willing to comply with the 29 conditions which were imposed by the Provident Fund authorities for the grant of exemption. The Petition was accordingly directed to stand over.

On 6th August 2004, the Assistant Provident Fund Commissioner rejected the application for exemption. The petition thus came up for hearing before the Learned Single Judge of this Court. By an order dated 22nd November 2004, the Learned Single

Judge issued certain further directions since there was a dispute between the parties as to whether there was compliance with the requirement of the authorities necessary for considering the application for exemption. The authorities were directed to take a final decision. It was, however, clarified that while the petition was being disposed of, it would be open to the Petitioner to challenge the final decision on all grounds and to agitate all the rights and contentions that were raised in the petition. In the circumstances it is not disputed before this Court that the question as to whether the Act itself applies to the Petitioner by virtue of the notification dated 17th May 1971 was kept open. On 30th March 2005 the application for the grant of exemption was rejected by an order passed by the Regional PF Commissioner. Thereafter, by a notification dated 27th July 2006 issued in the exercise of powers conferred by the provisions of Section 1(3)(b), the Central Government specifically brought within the purview of the Act establishments rendering IT related services. The notification covers the following categories of establishments:

> "Establishments engaged in manufacture, marketing, servicing and usage of a computer [as defined in clause (i) of Sub-section (1) of Section 2 of the Information Technology Act (21 of 2000)]/or deriving any form of output therefrom /or employing it for any type of

> processing services including software product companies, Internet and E-Commerce Companies, Information Technology Services and remote Maintenance Companies, Research and Development Companies, Systems integrators, on-site Services Companies and Off-shore Software Development Companies etc."

The petitioner has filed an affidavit in these proceedings on 13th September 2006 accepting that in view of the notification dated 27th July 2006, the Petitioner would clearly fall within the purview of the Act. The contention of the Petitioner, however, is that it has been brought within the purview of the Act for the first time by virtue of the aforesaid notification. The Petitioner, has stated that it has made an application on 6th September 2006 for the grant of an exemption. The application for exemption was rejected on 8th September 2006 on the ground that since the establishment of the Petitioner has already been granted coverage under the Act and as the matter is subjudice before this Court, the application could not be entertained.

III

Bereft of the details relating to the proceedings which have taken place between the parities, the question which arises in

this petition is whether the establishment of the Petitioner falls within the purview of the notification dated 17th May 1971. Counsel appearing on behalf of the Petitioner submitted that the notification dated 17th May 1971 applied to establishments rendering expert services of a particular nature viz., those falling in the same type or class as establishments supplying personnel, rendering advice on domestic or departmental enquiries or providing services in rectifying pilferage, thefts and pay roll irregularities to factories and establishments. On the other hand, on behalf of the Provident Fund authorities, it has been submitted that while the notification does not cover establishments rendering all types of expert services without exception; the words “and the establishments rendering expert services and employing 20 or more persons” would bring in the establishment of the Petitioner within the purview of the Act.

In assessing the merits of the rival contentions, it needs emphasis that the notification dated 17th May 1971 is intended to apply to every establishment rendering expert services such as supplying of personnel, advice on domestic or departmental enquiries, special services in rectifying pilferage, thefts and pay roll

irregularities in factories and establishments, provided the establishment employs 20 or more persons. The settled principle of interpretation is that the expression “such as” is intended to indicate that the specification of categories that follows thereafter is illustrative and not exhaustive. At the same time, the expression “such as” indicates that the ambit of the words which precede it must be construed contextually with the category or type constituted by the words that follow. Hence, establishments which fall within the purview of the words “expert services” must be those which fall within the same type as those that follow the words “such as”. The establishment must provide expert services and the nature of those services must be of the same nature as those specifically provided. Thus, while the words “such as” indicate that the establishments that are specifically spelt out are not exhaustive of the establishments which are covered by the notification, the question as to whether other establishments which are not specifically covered would be included, would depend upon the nature of the business and the nature of the activities carried on by the establishment. The question that arises before the Court is as to whether establishments supplying personnel or rendering advice on departmental enquiries or providing special services in rectifying

pilferage, thefts and pay roll irregularities can be regarded as falling within a particular type or class. Undoubtedly, those establishments do fall within a specific class or category. The establishments which have been spelt out can meaningfully be regarded as providing services in relation to manpower control or manpower related services. The establishments which are specifically named include those which supply personnel. Such establishments engage in the business of providing manpower to a client in areas of expertise or specialization. Similarly, advice in relation to domestic or departmental enquiries covers a specialised area of manpower regulation, namely, the regulation of misconduct by employees of the establishment. The provision of special services in rectifying pilferage, thefts and pay roll irregularities covers another facet of manpower control namely, an area where misdemeanor involving the property and finances of the employer is sought to be controlled by the provision of expert services. Establishments which provide services of an expert nature in the aforesaid areas can fairly be deduced to be falling within a particular type. In my view, therefore, while the words “such as” would indicate that the categories which have been expressly spelt out, are not exhaustive of the coverage of the notification, the

notification must be read in its natural and ordinary course as covering only those establishments which render services of an expert nature analogous to services which have been expressly catalogued.

The expression "such as" fell for consideration before a Bench of two Learned Judges of the Supreme Court in **Royal Hatcheries** (supra). The Supreme Court construed the provisions of Rule 5(2) of the Andhra Pradesh General Sales Tax Rules, clause 26 of which was to the following effect:

> "(xxvi) Livestock, that is to say, all domestic animals such as, oxen, bulls, cows, buffaloes, goats, sheep, horses etc." (emphasis supplied).

The Supreme Court interpreted both the expressions, namely, "that is to say" and "such as". The Court emphasised that the rule making authority had limited the expression "livestock" only to domestic animals by using the words "that is to say". Moreover, even amongst domestic animals, the rule making authority mentioned only some animals namely, oxen, bulls, cows, buffaloes, goats, sheep, horses etc. The Supreme Court was of the view that this indicated the type of domestic animals which the

rule making authority had in mind. In that context the Court observed as follows :

> "But the rule-making authority chose to limit the meaning of 'livestock' in the said clause only to domestic animals mentioned therein. Yet again, the clause does not stop with the words "all domestic animals". It proceeds further and goes on to illustrate the meaning of the expression "all domestic animals" by mentioning some of them, namely oxen, bulls, cows, buffaloes, goats, sheep and horses and then ends with the word "etc." This could not have been without a purpose. It could only be to indicate the type of domestic animals the rule-making authority had in mind. Why did the rule-making authority not mention a single bird, while mentioning so many animals? It is true, the words "such as" indicate that what are mentioned thereafter are only illustrative and not exhaustive. The clause also ends with the word "etc.", which does mean that some more domestic animals in addition to those specifically mentioned therein are also included within the meaning of the words "all domestic animals". But the question still remains whether day-old chicks were contemplated as included within the clause? In other words, whether chicks can be called 'domestic animals' so as to fall within the purview of the said clause?"

The Supreme Court held that there is no dispute about the principle that the words "such as" are meant to be illustrative and not exhaustive. The question which fell for consideration was whether chicks could be brought within the purview of the expression "all domestic animals". The Supreme Court held that despite the use of the word "etc." it was reasonable to deduce that domestic

animals of the type mentioned therein or indicated would be covered. Hence chicks would not fall within the purview of of the said clause:

> "Coming back to the popular sense, chicks are referred to as 'birds' – not as 'animals'. That this is the sense in which the said word is used is borne out by the type of animals mentioned in the clause by way of illustration. All of them are animals – domestic animals, to wit, oxen, bulls, cows, bufalloes; goats, sheep and horses. It is significant to notice that not one of them belongs to the birds' category. No doubt, the word 'etc.' follows the said words but then in the context, it would be reasonable and appropriate to say that while animals like dogs and cats – without trying to be exhaustive – may be covered by the said clause by virtue of the word "etc.", chicks cannot certainly be included therein. To do so would be to depart from and ignore the ordinary popular connotation of the words "domestic animals" besides doing violence to the spirit and structure of the clause. The use of the word "all" preceding "domestic animals" does not make any difference. It only means all domestic animals of the type mentioned therein – all of which are quadrupeds. If birds are also included in the clause, the very purpose of giving the illustrations disappears." (emphasis supplied).

The expression "such as" has been interpreted in a judgment of the Supreme Court in the **Central Bank of India** (supra) in the context of the provisions of Section 34 of Code of Civil Procedure, 1908. Placing emphasis on the definition of the expression in Webster's Dictionary, the Supreme Court has held that the words "such as"

mean “having the particular quality or character specified” or “representing the object as already particularised in terms which are not mentioned”. The Court held as follows :

> “Thus, generally speaking, the use of the word “such” as an adjective prefixed to a noun is indicative of the draftsman's intention that he is assigning the same meaning or characteristic to the noun as has been previously indicated or that he is referring to something which has been said before. This principle has all the more vigorous application when the two places employing the same expression, at the earlier place the expression having been defined or characterised and at the latter place having been qualified by use of the word “such”, are situated in close proximity.”

This decision has been followed by a Bench of two Learned Judges in **Ombalika Das vs. Hulisa Shaw**,[4] in the context of Rent Control Legislation.

In a judgment of this Court in **Bombay Municipal Corporation vs. Daily Taj Pvt. Ltd.**, (supra), the Court interpreted the provisions contained in Entry 32 of Schedule H of the Bombay Municipal Corporation Act, 1888. The question before the Court in the First Appeal was whether a Telephone Directory was subject to the levy of octroi duty. Entry 32 of Schedule H, in so far as it is

4 (2002) 4 SCC 539

material, included printed material “such as annual reports, balance sheets etc.” Mr.Justice R.M. Lodha who delivered the judgment of the Court relied on the judgment of the Supreme Court in **Royal Hatcheries** (supra) and held thus :

> “In Royal Hatcheries Pvt. Ltd. v. State of Andhra Pradesh, AIR 1994 SC 666, the Apex Court relied upon the judgment of the House of Lords in Ambatielos v. Anton Jurgens Margarine Works (1923) AC 175 and observed that the words “that is to say”, “such as” are the words generally understood as words of limitation. Regarding the meaning of the word “etc.”, it was observed that the said word has to be read having regard to the context and object underlying the said clause. Applying the said principle, the word 'such as' occurring in the taxable entry 32 of schedule 'H' which reads printed material such as annual reports, balance sheets etc. has to be read in the context of annual reports and balance sheets and it cannot be said that the telephone directory is something like annual report or a balance sheet of the company. Therefore, telephone directories printed by the respondent herein for M. T. N. L cannot be made subject to payment of octroi by bringing them under the expression, “printed material such as annual reports, balance sheets etc.”

The judgment of the Learned Single Judge again emphasised that the words “such as” are words of limitation. In that case, the Court held that printed material such as annual reports, balance sheets etc. would have to be given a limited meaning to printing material like or as that of annual reports and balance sheets and the word

'etc.' had to be read in the same context. Finally, it would be necessary to advert to the definition of the expression “such as” in the Oxford Dictionary, (Third Edition, at page 52). The expression “such as” is defined as “of the or a kind that” or “of the kind or degree already described or implied in context”.

In view of the position in law which emerges from the aforesaid decisions, the facts of the present case will have to be now dealt with. The essence of the business function of the Petitioner is to render consultancy services in areas of management control principally with the aid of computers and Information Technology. The nature of consultancy services provided by the Petitioner cannot be regarded as falling in the type or category of the expert services that are spelt out in the notification dated 17th May 1971. It is undisputed before the Court that the Petitioner does not supply personnel nor does it render expert services of the nature specifically spelt out in the notification. The services rendered by the Petitioner cannot be regarded as services of the same type or of the same nature as spelt out in the notification. The business of the Petitioner, as the material before the Court would show, comprises of providing

Consultancy Services involving the processing of statistical information in aid of managerial control in areas like finance, marketing and inventory control. All expert services have not been brought within the purview of the notification dated 17th May 1971. If the intention was to bring in all expert services of every nature whatsoever within the purview of the notification, there was no reason for the Central Government, acting as delegate of Parliament, to use the word “such as” and then elaborate certain specified categories of establishments. The reliance placed on behalf of the Respondents on the words “and the establishments rendering expert services” in the latter part of the notification is of no assistance to the case of the Respondents. Those words clarify the terms and conditions that are agreed upon between the establishments to which the services are supplied and the establishments rendering the services. Ex-facie, it is clear that the words “and the establishments rendering expert services” is not a residuary or catch-all phrase, but only specifies that there has to be an agreement in regard to the provision of expert services between the service provider and establishments to whom services are provided.

In these circumstances, the Petitioner is entitled to succeed. Rule is made absolute in terms of prayer clause (a) by quashing and setting aside the orders dated 2nd November 1999, and 15th November 1999 of the Regional Provident Fund Commissioner (Exh.A-17) and the order passed in appeal on 17th July 2000 (Exh.D. The earlier applications for exemption that were submitted by the Petitioner are rendered infructuous. It is an admitted position that the provisions of the Act are attracted to the establishment of the Petitioner after 27th July 2006 by virtue of the notification issued by the Central Government covering Information Technology related services within the purview of the Act. The Petitioner has submitted an application for exemption on 4th September 2006. The application was rejected by an order dated 8th September 2006, solely on the basis that the Petitioner has already been covered by the earlier notification dated 17th May 1971 and the present petition was pending before this Court. Having regard to the fact that the Petitioner has been held not to be covered by the provisions of the notification dated 17th May 1971 and since the petition is now disposed of in the light of the aforesaid directions, it would be open to the Petitioner to move the authorities for consideration of the application for exemption, which

exercise shall be carried out afresh in accordance with law. The Petition is accordingly disposed of. There shall be no order as to costs.

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